

REMARKS

This is in response to the Office Action mailed October 7, 2002. Claims 6, 19, and 27 have been amended.

In numbered paragraph 5 of the Office Action, the Patent Office makes note of a telephone conversation between the Examiner and the undersigned regarding a requirement for restriction of the claims into Group I claims (1-27 and 47-57) and Group II claims (28-46). During this telephone conversation, the undersigned provisionally elected with traverse Group I claims. In the Office Action, the Patent Office requested affirmation of the this selection and withdrew Group II claims, 28-46, from further consideration. The Applicant hereby affirms the election with traverse of Group I claims 1-27 and 47-57.

Rejection of claims 6, 19, and 27 under 35 U.S.C §112, second paragraph.

Reconsideration is respectfully requested of the rejection of the above claims under 35 U.S.C. §112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which the Applicant regards as the invention. The Office Action states that the phase "bark-like" in the above-mentioned claims renders the claims indefinite because the recitation suggests the claims include elements not actually disclosed in Applicant's specification.

While the Applicant does not agree that the phase "bark-like" renders the meaning of the claims unclear to those of ordinary skill in the art, Applicant has chosen, solely for the purpose of expediting prosecution and allowance, to amend the above-mentioned claims as indicated above to obviate the rejection.

Applicant notes that the above amendments do not in any way narrow the scope of these claims. The use of the modifier "-like" as in the above claims was intended by the Applicant, as is clear from the description in the specification, to convey its ordinary, common meaning – namely "resembling or characteristic of."<sup>1</sup> This language is extremely common in both technical and every-day usage and is imminently understandable. As is clear from the Applicant's specification, the phrase "simulates a bark-like appearance" is equivalent in meaning to the amended formulation "simulates bark."

The Applicant notes, with regard to the merits of the rejection, that the assertion made in the Office Action that the phrase “bark-like” reads on some subject matter that may not be specifically disclosed in Applicant’s specification is not relevant to a 112, second paragraph rejection. To begin with, of course, claims can and usually do cover embodiments and alternatives not specifically recited in the specification. It is a fundamental maxim of patent law that an Applicant’s claims are not to be strictly limited to the specific examples recited in the specification. In addition, any contention that the phrase is not properly supported by the specification as possibly suggested by the Office Action, not only misapplies 112, second paragraph (such an objection, if supportable, which here it is not, would properly be the basis of a rejection under 112, first paragraph on the basis that the specification does not enable the limitation or provide an adequate written description thereof), but is also incorrect. Applicant’s originally filed claims 6, 19, and 27, which form part of the original disclosure, disclose and support the subject matter. More importantly, the meaning and scope of this terminology is clearly explained in Applicant’s specification on page 8, lines 14-19; page 13, lines 8-10; and page 14, lines 12-20.

Rejection of claims 1, 2, 7, 8, 11-15, 20, 21, 24, 25, 49, 53, and 55 under 35 USC§102 (e) as being anticipated by U.S. Patent No. 6,247,215 to Van Alboom et al. (hereinafter “Van Alboom et al”).

Reconsideration is respectfully requested of the rejection of the above claims under 35 U.S.C. §102(e) as being anticipated by Van Alboom et al. The Office Action maintains that the structure of the fabrics recited in the rejected claims is produced by air embossing the flocked fabric and subsequently printing it. Based on this observation, the Office Action appears to maintain that all of the limitations recited in the presently rejected claims are simply inherent in essentially any generic process of air embossing and printing a flocked fabric. The Office Action then points to a single sentence in the “Background of the Invention” section of Van Alboom et al., which sentence refers, in extreme generality, to certain prior art methods for producing flocked fabrics, stating: “[t]exturing” has also been attempted by air embossing flock fabrics and, thereafter, printing.” Based on this single sentence in which Van Alboom et al. very generally

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<sup>1</sup> The American Heritage Dictionary, second College ed., Houghton Mifflin, Boston, p. 731 (1991).

refers to the existence of flocked fabric air embossing and printing techniques, the Office Action maintains that Van Alboom et al. inherently anticipates each and every limitation of the above rejected claims.

Applicant respectfully disagrees. To begin with, the Applicant points out that the burden is on the Patent Office to establish the inherency in the prior art of each and every the claim limitations.<sup>2</sup> The Office Action fails to meet this burden by failing to provide any reasonable rational or technical reasoning to support the proposition that each and every limitation of the rejected claims would necessarily flow from the single sentence in Van Alboom et al., simply indicating the existence of air embossing and printing techniques. The Patent Office has not, in the present rejection, established anything close to an adequate basis in fact and/or technical reasoning to reasonably support the assertion that all of the limitations recited in Applicant's rejected claims are inherently anticipated by the single sentence referred to in Van Alboom et al, as required under the law (see MPEP §2112).

Applicant, moreover, is aware it is known, generally, how to air emboss flocked fabrics and thereafter print them. However, contrary to the assertions of the Patent Office, conventional air embossing and printing methods would not yield fabrics having all the structural features recited in Applicant's presently rejected claims. Applicant's fabric as recited in these rejected claims do not inherently result from simply air embossing and subsequently printing flocked fabrics according to typical conventional methods known in the art. By contrast, the production of many of the claimed features, as explained in further detail below, results from unique synergistic effects resulting from the inventive embossing and printing techniques described in Applicant's specification. Indeed, a substantial portion of Applicant's specification is directed to describing various apparatus and methods for obtaining the inventive features of the claimed fabrics. Such fabrics, as recited in Applicant's currently rejected, claims are not known in the

<sup>2</sup> To meet this burden, the Examiner must provide a rationale or evidence tending to shown inherency. The fact that a certain characteristic may be present in the prior art is not sufficient to establish the inherency of that result or characteristic (see MPEP §2112). The limitation must necessarily be present in the teachings of the reference, such that it would be recognized as such by persons of ordinary skill in the art (MPEP §2112 and §2131.01). Inherency may not be established by mere probabilities or possibilities (MPEP §2112). "In relying upon a theory of inherency, the Examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art" (MPEP §2112 quoting Ex parte Levy, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Int. 1990)(emphasis in original quotation)).

prior art and are not inherently produced by the typical conventional processes alluded to in the brief recitation in Van Alboom et al. relied on in the Office Action.

To the extent that the Patent Office in the present rejection relies on the fact that the recited limitations in the rejected claims are inherent in Applicant's own methods for air embossing a flock fabric and subsequently transfer printing the fabric, as disclosed in the instant application, this is, of course, irrelevant to the present rejection, unless the Patent Office can establish that these methods were known in the prior art. No such assertion is made in the Office Action. Certainly, the single sentence in Van Alboom et al. does not describe or even remotely suggest the detailed methods set forth in Applicant's specification for producing the claimed fabrics. What the Office Action seems to suggest is that because the structural limitations of Applicant's fabrics as claimed in the currently rejected claims result from air embossing and printing the fabrics according to Applicant's disclosed methods, that any and every method involving a combination of air embossing and printing would inherently anticipate Applicant's claims. This is, as explained above, is logically insupportable and simply not correct.

Looking to the independent claims, regarding independent claim 1, the sentence in Van Alboom et al. relied on in the Office Action does not disclose or suggest an embossing or printing method necessarily resulting in a fabric having an embossed pattern having generally elongate shapes and a superimposed printed pattern having a plurality of visible features with generally elongate shapes, wherein the longitudinal axis of the embossed shapes is oriented in substantially the same direction as the longitudinal axis of the shapes of the visible features of the printed pattern. As explained in Applicant's specification, and as illustrated in Applicant's figures (see, e.g. Applicant's specification on pages 10-15 and Applicant's figures 2d and 2e), Applicant's novel and inventive co-alignment of generally elongate features results in the production of a printed and embossed flocked fabric that can be characterized by unique and realistic texturing and desirable visual contrast and color rendition due to synergistic visual effects of the superimposed embossed regions and printed features. Such an effect, to the best of the Applicant's knowledge, was unknown in the prior art and was unattainable by typical conventional embossing and printing methods.

Regarding independent claim 13, similarly to independent claim 1 above, nowhere does the brief disclosure in Van Alboom et al., relied on by Patent Office, disclose or suggest any

methods of texturing and printing pile fabrics inherently resulting in a fabric comprising a pile layer having superimposed thereupon an embossed pattern and a printed pattern, which printed pattern is characterized by a scene or illustration, wherein the embossed pattern imparts a three-dimensional texture to the scene or illustration imparting a visual effect to the scene or illustration rendering it more realistic than the scene or illustration without the superimposed pattern. As discussed above, the ability to produce such textured patterns as recited in independent claim 13 was not believed to be known or enabled by prior art air embossing and printing techniques. Accordingly, the generic, prior art air embossing and printing techniques referred to in Van Alboom et al. would not necessarily result in the above-mentioned features recited in claim 13.

The same reasoning holds equally true for the fabric recited in independent claim 49. Nowhere does Van Alboom et al. disclose or suggest any air embossing and printing techniques that inherently anticipate or would necessarily result in a fabric having a pile layer having superimposed thereupon an embossed pattern and a printed pattern, which is characterized by a scene or illustration, wherein the embossed pattern imparts a three-dimensional texture to the scene or illustration creating the recited enhanced visual representations of color and texture described in claim 49.

Independent claim 53, similarly, recites specific features related to the synergistic effect of the embossed pattern and printed patterns in creating a decreased level of visual contrast, which features are neither disclosed nor suggested in the sentence from Van Alboom et al. relied on in the Office Action. Moreover, claim 53 is directed to a camouflage fabric having a printed pattern a scene, illustration, or pattern selected to visually blend into a surrounding environment in which the fabric is utilized. None of these features are even remotely suggested or alluded to in Van Alboom et al.

In view of the above remarks, it is Applicant's belief that it has been demonstrated that the present rejection of independent claims 1, 13, 49, 53 as inherently anticipated by the single sentence in Van Alboom et al. is not adequately supported, not correct, and should be withdrawn.

Claims 2, 7-8, 11, and 12 depend from and include all of the limitations of independent claim 1 and are believed to patentably distinguish Van Alboom et al. for at least the reasons stated above with regard to claim 1; therefore, reconsideration of the rejection of these claims on

the present grounds is also respectfully requested. Claims 14, 15, 20, 21, 24, and 25 depend from and include all of the limitations of independent claim 13 and are believed to patentably distinguish Van Alboom et al. for at least the reasons stated above with regard to independent claim 13. Accordingly, reconsideration and withdrawal of the rejection on the present basis of these claims is also respectfully requested. Claim 55 depends from and includes all of the limitations of independent claim 53, and is believed to patentably distinguish Van Alboom et al. for at least the reasons stated above with regard to independent claim 53. Therefore, reconsideration and withdrawal of the rejection of claim 55 on the present basis is also respectfully requested.

Rejection of claims 3-6, 16-19, 26, 27, 47, 48, 50, 51, and 56 under 35 U.S.C. §103(a) as being unpatentable over Van Alboom et al. in view of U.S. Patent No. 5,756,180 to Squires et al. (hereinafter “Squires et al.”)

Reconsideration is respectfully requested of the rejection of the above claims under 35 U.S.C. §103(a) as being unpatentable over Van Alboom et al. in view of Squires et al. The Office Action states that although Van Alboom et al. does not specifically teach a camouflage fabric, camouflage fabrics are known in the art. The Office Action points out that Squires et al. discloses a flocked fabric having a camouflage pattern printed thereon. The Office Action then maintains that it would have been obvious to one skilled in the art to chose a camouflage printed pattern for the methods referred to by Van Alboom et al., in order “to provide an aesthetically pleasing and marketable product.”

Applicant respectfully disagrees. The Office Action appears to use Squires et al.’s disclosure of a camouflage-printed flock fabric to support its proposition that camouflage-printed flocked fabrics are well-known in the art. From this, it appears that the Office Action suggests that the disclosure of Squires et al. of printing flocked fabrics with a camouflage pattern would have made it obvious to those skilled in the art to select a camouflage pattern for the printed pattern of the conventional air embossing and printing methods briefly referred to in Van Alboom et al. This reasoning, and the current rejection, is fatally flawed for at least two reasons.

First, far from supporting the proposition that Squires et al. suggests printing an air embossed flocked fabric with a camouflage pattern, the disclosure of Squires et al. strongly

teaches away from such a combination. Secondly, even if those of ordinary skill in the art were to combine Squires et al. and Van Alboom et al. in the way suggested by the Patent Office, neither reference, alone or in combination, explicitly or inherently teaches or suggest any fabrics, or any methods necessarily resulting in such fabrics, having all of the characteristics of the fabrics recited in the claims rejected on the current basis. In other words, Squires et al., which does not even refer to air embossing at all, cannot cure the deficiencies of Van Alboom et al. pointed out by Applicant in the remarks to the 102(e) rejection.

Regarding point one above, the conventional methods referred to in Squires et al. are directed to forming, generally, a flocked fabric having an air-embossed surface texture and a printed pattern thereon. The disclosure of Squires et al. clearly teaches away from forming such a fabric with a camouflage printed pattern thereon, contrary to what is suggested in the Office Action.

Specifically, Squires et al teaches that it is important when creating a camouflage-printed flocked fabric that, during the printing process, the flock be completely flattened to produce a featureless, non-textured surface, to render the fabric "suitable for outdoor use as worn garment". (see column 1, lines 15-16 and 22-25; column 5, lines 9-13 and 53-56; column 6, lines 67- column 7, line 4; column 7, lines 30-33; column 9, lines 23-25; column 10, lines 55-58; column 10, line 64-column 11, line 1; column 11, lines 4-6, 11-12, 20-22, and 24-37; and column 12, lines 7-11). Squires also teaches that it is important that the flock be completely flattened in order for the printed pattern to appear "crisp and without distortion." (column 1, lines 27-28; column 2, lines 5-14; column 6, lines 12-20; column 7, lines 13-18; column 9, lines 16-20; column 11, lines 38-41 and 51-54; and column 12, lines 1-6 and 50-54). Accordingly, those of ordinary skill in the art would interpret Squires et al as teaching against the superimposition of an embossed pattern and a printed pattern. Instead, Squires et al. would clearly suggest that camouflage-printed flocked fabrics should be printed in a manner which completely flattens the flock prior to or during printing. What sense would there be in air embossing a flocked pile fabric with a textured pattern if such pattern is only to be completely ironed-out and obliterated prior to or during the printing process, as taught by Squires et al.? Of course, following the teaching of Squires et al., those skilled in the art would simply choose to print an unembossed, flocked fabric in the manner described in Squires et al. Squires et al. specifically teaches that

printing on flattened flock is important to avoid visual distortion. Accordingly, those of ordinary skill in the art in possession of Squires et al. would have reasonably concluded that printing Squires et al.'s camouflage patterns on an air textured surface would cause the very "distortion" that Squires et al.'s printing technique was specifically designed to avoid.

In short, those in ordinary skill in the art looking to Squires et al. would not be motivated to print the camouflage pattern on an air embossed, textured flock fabric but rather, in view of Squires et al.'s disclosure of the importance of flattening the flock completely during the printing process to achieve desirable/necessary properties for camouflaged outdoor fabrics and a desirable visual rendition of the camouflage pattern free of distortion, would be motivated to print flock unembossed fabrics in such a way as to completely flatten the flock prior to or during printing to yield a flat, smooth, untextured fabric.

Regarding point two raised above, as discussed in more detail below, even if one were to presume that Squires et al. were to motivate one of ordinary skill in the art to print fabrics air embossed and printed according to the conventional methods referred to in Van Alboom et al., with a camouflage pattern as suggested in the Office Action, as discussed in response to the rejection under 35 USC §102(e) over Van Alboom et al, such combination would still not disclose or suggest, either explicitly or inherently, all of the features recited in Applicant's rejected claims. In other words, Squires et al., not only not suggesting the superimposition of an air embossed pattern and a printed camouflage pattern but strongly teaching away from such combination as explained above, cannot cure the above-described deficiencies of Van Alboom et al. Accordingly, in the paragraphs below, the Applicant illustrates some of the specific features recited in claims rejected on the current basis which are neither disclosed nor suggested by the combination of Van Alboom et al. and Squires et al. proposed in the Office Action.

Regarding claims 3-6, these claims depend from and include all of the limitations of independent claim 1. As explained in the previous section, Van Alboom et al. neither discloses nor suggests all of the recited limitations of the fabric described by independent claim 1. As explained above, Squires et al. cannot cure these deficiencies. Accordingly, claims 3-6, which depend from independent claim 1, are also patentable over the combination of Van Alboom et al, and Squires et al. Similarly, claims 16-19 depend from and include all of the limitations of independent claim 13, claims 50, 51 depend from and include all of the limitations of

independent claim 49, and claim 56 depends from and includes all the limitations of independent claim 53. As explained in the previous section, each of the independent claims from which these claims depend, similarly as with claim 1 discussed immediately above, recite limitations neither disclosed, inherently or explicitly, nor suggested by Van Alboom et al. Since, as explained above, Squires et al. does not cure any of these deficiencies, these claims are not rendered obvious by the combination of Van Alboom et al. and Squires et al. Accordingly, reconsideration and withdrawal of present grounds for rejection of these dependent claims is respectfully requested.

Regarding independent claim 26, nowhere does Van Alboom et al. or Squires et al, alone or in combination, appear to disclose, explicitly or inherently, or suggest a camouflage fabric comprising a layer of air textured pile having printed thereon an illustration, wherein the air textured pattern comprises a random overlay on the illustration of depressions that are non-uniform in length and width. As explained in Applicant's specification, such a combination of features can lead to the embossed and printed pattern having unique and unexpected visual properties and visual contrast not attainable with typical prior art methods for air embossing and printing. Accordingly, independent claim 26 is believed to be patentable and non-obvious over the combination of Van Alboom et al. and Squires et al. proposed in the Office Action. Accordingly, reconsideration and withdrawal of the rejection of this claim on the present basis is respectfully requested. Claim 27 depends from and includes all of the limitations of independent claim 26 and is believed to be patentable over the combination of Van Alboom et al. and Squires et al. for at least the reasons stated above for claim 26.

Regarding independent claims 47 and 48, claim 47, similarly to independent claim 1, recites an air embossed pile fabric having an overlaid printed pattern, wherein visually discernable embossed regions have longitudinal axes oriented substantially along a given direction and visible features of the printed pattern have features with longitudinal axes being oriented substantially along the same direction. Independent claim 48, similarly to independent claim 13 discussed above, recites an air embossed pile fabric with an overlaid printed pattern, wherein the embossed pattern and the printed pattern are oriented and superimposed with respect to each other so that the texture of the embossed pattern imparts a visual effect to the printed pattern which renders it more realistic than without the superimposed embossed pattern.

Accordingly, as with independent claims 1 and 13, neither of independent claims 47 nor 48 are either disclosed, explicitly or inherently, nor suggested by Van Alboom et al. or the combination of Van Alboom et al. and Squires et al. For this reason, Applicant believes that the rejection of these claims on the present basis has been overcome, and reconsideration and withdrawal of the rejection is respectfully requested.

Rejection of claims 9, 10, 22, 23, 52, 54, and 57 under 35 U.S.C. §103(a) as being unpatentable over Van Alboom et al.

Reconsideration is respectfully requested of the rejection of the above claims under 35 U.S.C. §103(a) as being unpatentable over Van Alboom et al. The basis for the present rejection in the Office Action appears to rest on the assertion that Van Alboom et al. inherently anticipates the independent claims from which the presently rejected dependent claims depend, but does not teach the limitations of random alignment of patterns and non-uniform length and width of regions of the embossed patterns, as recited in one or more of the presently rejected claims. The Patent Office, in the Office Action, maintains that such features are merely matters of design choice, and, that the provision of such features would, therefore, have been obvious to those of ordinary skill in the art.

To begin with, because the present rejection is founded upon the anticipation of the independent claims from which the presently rejected dependent claims depend by Van Alboom et al., the present rejection cannot stand in view of Applicant's demonstration in the remarks regarding the 102(e) rejection of these independent claims that, in fact, Van Alboom et al. neither anticipates, explicitly or inherently, nor renders unpatentable these independent claims. Accordingly, claims 9 and 10, being dependent upon and including all of the limitations of independent claim 1, claims 22 and 23, being dependent upon and including all of the limitations of independent claim 13, claim 52, being dependent upon and including all of the limitations of independent claim 49, and claims 54, 57, being dependent upon and including all of the limitations of independent claim 53, are similarly not unpatentable over Van Alboom et al.

While the above remarks are sufficient to overcome the present rejection, Applicant also notes that the features of random alignment of patterns and the selection of non-uniform length and width of regions of the embossed pattern, in the context of Applicant's inventive methods for forming the disclosed and claimed embossed and printed fabrics, would not have been a matter of obvious design choice to the ordinary practitioner. As disclosed in Applicant's specification, the above-mentioned features can contribute to the synergistic and unexpected visual effects characteristic of the inventive fabrics. Moreover, also as explained in Applicant's specification, the ability to achieve such unique printed and embossed fabrics while using an essentially random overlay of the printed pattern upon the embossed pattern enables the fabrics to be manufactured more easily and cost effectively (e.g., see pages 15 and 16 of Applicant's specification). The ability to utilize a random overlay while achieving the unique fabric features described in Applicant's specification and recited in Applicant's claims is not merely a matter of "design choice" or a routine selection of known alternatives, as suggested in the Office Action, but rather depends a myriad of other synergistic factors taught only in Applicant's specification.

In view of the above remarks, it is believed that the rejection of the above-mentioned claims as unpatentable in view of Van Alboom et al. has been overcome, and that the non-obviousness of the additional features added by the above-mentioned dependent claims has been demonstrated. Accordingly, reconsideration and withdrawal of the present rejection is respectfully requested.

### CONCLUSION

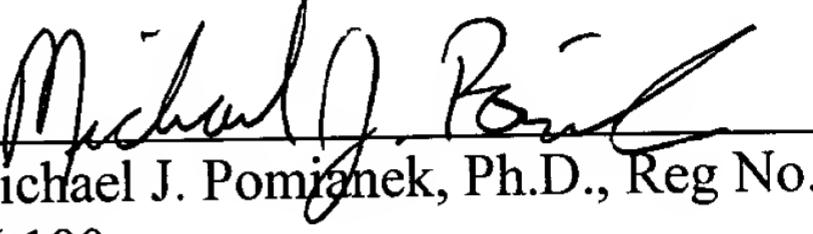
In view of the foregoing amendments and remarks, this application should now be in condition for allowance. A notice to this effect is respectfully requested. If the Examiner believes, after this amendment, that the application is not in condition for allowance, the Examiner is requested to call the Applicant's attorney at the telephone number listed below.

If this response is not considered timely filed and if a request for an extension of time is otherwise absent, Applicant hereby requests any necessary extension of time. If there is a fee

occasioned by this response, including an extension fee, that is not covered by an enclosed check, please charge any deficiency to Deposit Account No. 23/2825.

Respectfully submitted,  
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**x01/07/03**

**Marked-up Claims As Amended**

6. **(Amended)** The fabric as in claim 4, wherein the embossed pattern simulates [a] bark[-like appearance].

19. **(Amended)** The fabric as in claim 17, wherein the embossed pattern simulates [a] bark[-like appearance].

27. **(Amended)** The fabric as in claim 26, wherein the texturing simulates [a] bark[-like appearance].